IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No,. 1034 of 2004

Ashish Semwal and others …….. Petitioners.

Versus

H.N.B.U. through its Registrar and others…… Respondents.

Date of decision: 18, December 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1034 of 2004 (M/S)

1. Ashish Semwal
2. Chandra Beer Singh Dhawan
3. Sachin Bhatt
4. Sanjay Bhatt
5. Rohit Sharma ……Petitioners

VERSUS

1. H.N. Bahuguna, Garhwal University
   Through its Registrar, Srinagar Garhwal.

2. Vice Chancellor, H.N. Bahuguna
   Garhwal University, Srinagar Garhwal.

3. Principal, Graphic Era Institute of Technology
   Dehradun

……Respondents

ALONG WITH

Civil Writ Petition No. 1312 of 2004 (M/S)

Anil Bhushan Chakarabarty
S/o Shri late Chandrasheghar Prasad Verma
R/o C/o G.E.I.T. 566/6,
Bell Road
Claimant Town
District – Dehradun ……Petitioner

VERSUS

H.N. Bahuguna, Garhwal University
Through its Registrar,
Srinagar Garhwal & others ……Respondents

AND

Civil Writ Petition No. 1067 of 2004 (M/S)

Mitul Yadav
S/o Shri Sunil Yadav
R/o Railway Colony
Lalkuan
District – Nainital ……..Petitioner

VERSUS

H.N. Bahuguna, Garhwal University
through its Registrar,
Srinagar Garhwal & others ……Respondents

AND

Civil Writ Petition No. 1303 of 2004 (M/S)

Raj Mani
S/o Shri R.P. Singh
R/o C/o Mr. S.M.H. Nakvi
Lane no. 3, Turner Road
Claimant Town
District – Dehradun ……Petitioner

VERSUS

H.N Bahuguna, Garhwal University
through its Registrar,
Srinagar Garhwal & others …….Respondents

AND

Civil Writ Petition No. 1066 of 2004 (M/S)

Gurdeep Kumar
S/o Shri Tarsem Lal
R/o Shri Ramnagar
Jwalapur

District – Haridwar ……Petitioner

VERSUS

H.N. Bahuguna, Garhwal University
through its Registrar,
Srinagar Garhwal & others ……Respondents

Civil Writ Petition No. 1059 of 2004 (M/S)

Dhruv Sahani
S/o Bhushan Sahani
R/o Shanti Niketan Mani Ram Road
Rishikesh
District – Dehradun ……Petitioner

VERSUS

H.N Bahuguna, Garhwal University
through its Registrar,
Srinagar Garhwal & others ……..Respondents

Mr. C.D. Bahuguna, Mr. Paresh Tripathi, Mr. D.C.S. Rawat, Learned counsel for the petitioners.
Shri L.P. Naithani, learned senior Advocate assisted by Mr. J.P. Joshi, learned counsel for the respondents no. 1 and 2.
Mr. Ram Ji Srivastava, learned counsel for respondent no. 3.

Hon'ble Prafulla C. Pant, J.

By means of these writ petitions, moved under Article 226 of the Constitution of India, the petitioners have sought mandamus to appear in the examination of their next semesters of the B.Tech course and permission to clear the back papers. Learned counsel for the parties requested that all these petitions be disposed of finally as the examination of the University are going to commence from 20.12.2004, as such these cases are taken up for disposal.

2) Brief common factual matrix of these cases is that Graphic Era Institute of Technology is affiliated to H.N.B. Garhwal University and petitioners are its students of B.Tech course. As per the rules of the University, a student

is required to appear in 10 papers i.e. 6 papers in theory and 4 papers in practical in each semester (there are in all 8 semesters). If a student fails to clear three or less than three papers, he is permitted to clear the said papers in subsequent semesters as back papers. The petitioners case is that they have not been provided two opportunities to clear the back paper and discriminated against those who were allowed to clear back papers by giving them more than one opportunity.

3. In the counter affidavit, filed on behalf of the University, it stated that the petitioners have not been discriminated as extra opportunity was given to only those students who have failed in only paper, to clear it by way of re-back paper. Petitioners have failed in more than one paper, as such they cannot claim right to appear in examination on the ground of discrimination as against those who were given extra opportunity to clear their back paper.

4. Petitioners of the writ petition no. 1034 of 2004 (M/S) are of the batch 2001-2005 while the petitioners of rest of the petitions (i.e. writ petition no. 1066 of 2004 (M/S), writ petition no. 10678 of 2004 (M/S), writ petition no. 1303 of 2004 (M/S), writ petition no. 1312 (M/S) of 2004 writ petition no. 1059 (M/S) of 2004) are students of 2002-2006 batch.

4. I heard learned counsel for the parties and perused the affidavits filed by them.

5. Before further discussions, it is pertinent to mention here the relevant rules governing the impugned

examination. The relevant portion of the rules are being reproduced below:-

"EXAMINATION RULES:

The students are advised to make themselves familiar with the ordinance and examination rules. The extract of rules is given as below:

(1) The minimum pass marks in theory subject (including Sessional marks) shall be 40%

(2) Student's performance will evaluated through continuous assessment in the form of class tests, assignments, quizzes, viva-voce/practical etc. thre shall be also be an examination at the end of each semester in theory subjects, practical and project.

(3) A distribution of marks for the class test, quiz test, assignments, and semester theory, practical and other examinations shall be as the prescribed scheme of examination.

(4) The maximum marks for the theory subjects shall consist of marks allotted for end semester examination and sessional work.

(5) The maximum marks for the practical shall consist of the maximum marks allotted for practical examination and sessional work.

(6) Pass/Fail in a subject shall be declared on the basis of total marks obtained in theory/practical examination and sessional award for theory/practical subjects.

(7) The minimum pass marks in practical subjects (including sessional marks) shall be 50 %.

(8) The marks of the previsious semester (s)shall not be added in declaring the result of any semester examination. Pass/Fail in a particular semester shall be decided only on the basis of the marks obtained in that semester examination.

3.I Promotion Rules:

(1) A Candidate satisfying all the conditions under examination rules shall be promoted to the next semester.

(2) A Candidate not satisfying the above conditions but failing in not more than three subjects (Theory and/or practical) of a semester examination shall be governed by section 3.2.

(3) All other candidates will be required to report the semester either as regular candidates, after re-admission or opting for ex-studetship. This facility is however subjected to the time limits stipulated in ordinance.

3.2 PROMOTION UNDER CARRY-OVER SYSTEM:

(1) A candidate who fails in the category of section 2 of promotion rules (3.1.2) become eligible for provisional promotion to next semester and to the carry-over system as per the following table:

For Promotion To & exam				Max Permitted No. of carry-over Subjects (Units) of semester.			
	I	II	III	IV	V	VI	VII	VIII
II	3	3	-	-	-	-	-	-
III	3	3	-	-	-	-	-	-
IV	3	3	3	-	-	-	-	-
V			3	3	-	-	-	-
VI			3	3	3	-	-	-
VII					3	3	-	-
VIII					3	3	3	-

(2) No candidate will be admitted/permitted to appear at the following semester examination if he/she does not pass in carry over subject of the earlier semester as given below:

Admission to & Semester exams Not permitted			carry over subjects not cleared of semester.		
V	I	&	II		
VII	**I**	**II**	**III**	**&**	**IV**

6. The above chart particulary contained with Clause (2) of examination rules, makes it clear that if the carry over subjects not cleared of first semester and second semester admission and semester exam of fifth semester is impermissible. Similarly, it is also clear from the said chart that if the carry over subjects are not cleared of first, second , third and forth semester, a student cannot be permitted

admission or to appear in exam of seventh semester. The above mentioned rules are contained in ordinance syllabi of B.Tech course for H.N.B. Garhwal University, Srinagar.

Learned counsel for the petitioners, argued that other students were permitted to clear the back papers in violation of above rules as such the petitioners cannot be discriminated. I have examined the submission advanced on behalf of the petitioners and have also gone through the amendment in rules made by the University, vide its notification in November, 2004. The said notification reads as under:-

"NOTIFICATION

On the recommendations of Faculty Board of Engineering Faculty, the Hon'ble vice-Chancellor approved the following amendments in the ordinance of B.E/B.Tech courses of the University and its affiliated college/Institutes for the batch of 2001-2005 only.

1. *Incorporation of provision of 5 (five)special grace marks for maximum three papers or aggregate once in the V or VI Sem. Entry check points.*
2. *Carry over check-maximum one paper may be allowed (as reback) a V & VI checkpoints.*
3. *Grace marks 5 (five) per semester (for maximus three paper or aggregate).*

Registrar"

In view of above amendment, it is clear that only those students were given concession under the rules by way of re-back paper who have failed only one paper. As such, the allegations of discrimination have no legs for the reason that equal treatment is to be made only among equals

and not un-equals. In the opinion of this court, the denial of the

admission in the next semesters to the petitioners of fifth or seventh semester and to clear back paper is not violative of article 14 of the Constitution of India.

7. Learned counsel for the petitioners of writ petition no. 1066 of 2004 (M/S), 1059 of 2004 (M/S) submitted that the concession granted to the students of batch of year 2001-2005, cannot be denied to the students of batch 2002-2006. Learned counsel for the University, submitted before this Court that since Graphic Era Institute and some other Institutes were new and its first batch course began with the batch of 2001-2005 and in first year they had difficulty in starting the studies and completing the admission etc that is why only said batch was given the concession and others are not entitled to it. I am in agreement with the submission of learned counsel for the respondents that the said concession cannot be said to be discriminatory against the students of the other batch for the reason that if such concession is made permanent feature, the university will never be able to change its rules and guidelines because every time a batch will make the same allegations and the power of the university to make and modify rules, which is conferred to it under the U.P. State University Act, 1973, cannot be exercised by them.

8. In Thapar Institute of Engineering & Technology Vs. Gagandeep Sharma (2001) 9 Supreme Court Cases 157 , Hon'ble Apex court on a similar question of permitting the students to clear back paper, has held as under:-

"The court would normally not interfere with such prescribed standards and especially when they are intended to improve the academic standards in their respective institutes. The scope of judicial review in such matters would be very limited."

9. Learned counsel for the petitioners also argued that fee has been accepted by the University of the next semester and now petitioners cannot be denied to the right to appear in exam of V or VII semester In the opinion of this Court, principle of estoppels does not apply against the statute or the rules. Moreover, learned counsel for the university explained that the fee, if any, collected was done so by the institute on its own risk, and the same can be refunded to the students by the University/Institute or may be adjusted after clearing the back paper of the back semester as ex-student.

10. In the above circumstances and in view of the discussion as above, all the above writ petitions are liable to be dismissed and are accordingly dismissed with the observation that if grace marks were not given to a student under amended rules, the same shall be awarded as per the rules. No order as to costs.

(Praculla C. Pant, J.)

Dt: December 18 , 2004

Sweta